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EXAMINER
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CERNOCH, STEVEN MICHAEL

ART UNIT	PAPER NUMBER
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3752

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/590,721		WEGGELAAR ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	STEVEN CERNOCH		3752	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 60-126 is/are pending in the application.
- 4a) Of the above claim(s) 68,79-82,86-97,104,106,107 and 119-126 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 60-67, 69-78, 83-85, 98-103, 105 and 108-118 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 86-97, 107 and 120-125 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/18/2008.

For further clarification of the restriction requirement, it is noted that species 1, figure 1 is directed to the figures 1 to 6c, species 2, figure 7a is directed to the figures 7a to 10b, species 3, figure 11a is directed toward figures 11a to 11c and species 4, figure 12a is drawn to figures 12a to 12b.

With Applicant's election, claims 89-97 are all dependent claims of the independent claim 86. Applicant did not elect claim 86 and therefore claims 89-97 cannot be elected either. Claim 68 is drawn to species 2. Claims 79 to 82 are drawn to species 2. Claims 104, 106, 119 and 126 are also directed toward species 2. These claims will not be examined.

Applicant's election with traverse of species 1, figure 1 in the reply filed on 9/18/2008 is acknowledged. The traversal is on the ground(s) that there isn't a serious search burden. This is not found persuasive because as it is under the Examiner's discretion as to when there is a search burden or not and in the present instance the species listed would lead to being classified differently thus creating a search burden.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: first wall, second wall, walls, said wall, rear wall, two parts, first part and second part.

### ***Drawings***

The drawings are objected to because numerals 10 and 11 are not depicted. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the accommodation

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space, reservoir, and support surface must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 60-85, 98-106, 108-119 and 126 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains

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subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 60-85 and 113-118 all include language such as "first wall" and "second wall" while claims 98-106 and 126 include language such as "walls," "said wall" and "rear wall." Claims 108-112 include language such as "two parts," "first part" and "second part." These features are presented in the claims but have no basis in the specification. For the "First holder" there isn't a "first wall" or "second wall" and for the "Second holder" there no "walls," "said wall" or "rear wall" nor "parts," "first part" or "second part" mentioned.

Claims 60-85, 98-106, 108-119 and 126 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. "Front part," "rear part," "covering layer," "membrane" are all critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). As per the claims, described are walls for the first holder whereas in the Specification these are only described as a specific front or rear part while at the same time for the second holder again are their described walls or parts while in the specification these are only shown as a covering layer and a membrane.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 60-85, 98-106, 108-119 and 126 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In independent claims 60, 98, 106 and 108 it is not understood what is meant by “the first holder has an accommodation space for accommodation therein of the body.” These claims shall be examined as best understood.

Re claim 61, it is not understood what Applicant means by “portion of the first wall of the first holder bounding the accommodation space is for the larger part made of transparent or translucent material.” This claim will be examined as best understood.

In claims 84 and 85 it is not understood what is meant by the term substantially. These claims shall be examined as best understood.

In independent claims 98 and 106, it is not understood what is meant by “wherein the body is formed like a second holder.” These claims shall be examined as best understood.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 60-69, 72-74, 85, 108-109, 112 and 114-118 are rejected under 35 U.S.C. 102(b) as being anticipated by Petti et al. (US Pat No 6,343,434 B1).

Re claim 60, Petti et al. shows, as best understood, an assembly of a body (Fig. 1) including an agent that is in liquid or solid condition (20) discharging an active gaseous substance, and a first holder (10, 40) for the body, the first holder being provided with apertures for passage of said active gaseous substance (Fig. 2, 10g), the first holder comprising a first wall (Fig. 1, 40) and a second wall (10) that are provided with means cooperating with each other for connection to each other, wherein the first wall is made of hard material retaining its shape (column 5, lines 29-31) and the second wall is made of a different, synthetic and/or flexible material (column 4, lines 40-43), said first and second walls defining an accommodation space (Fig. 1, 10a) for accommodation therein of the body, wherein said first wall in a portion bounding the accommodation space is at least partially made of transparent or translucent material (column 5, lines 29-31).

Re claim 61, Petti et al. shows, as best understood, wherein the portion of the first wall of the first holder bounding the accommodation space is for the larger part made of transparent or translucent material (column 5, lines 29-31).

Re claim 62, Petti et al. shows wherein the portion of the first wall of the first holder bounding the accommodation space is entirely made of transparent or translucent material (column 5, lines 29-31).

Re claim 63, Petti et al. shows wherein the said material is transparent (column 5, lines 29-31).

Re claim 64, Petti et al. shows wherein the entire first wall is made of the transparent or translucent material (column 5, lines 29-31).



Re claim 65, Petti et al. shows wherein the body comprises a second holder that is filled with a liquid or solid agent (Fig. 1, 50).

Re claim 66, Petti et al. shows wherein the first holder is suitable to be placed upright (Fig. 2, 10), wherein at least a lower portion of the first wall is transparent (column 5, lines 29-31).

Re claim 67, Petti et al. shows wherein the connection means are operative by means of snap action (column 3, lines 56-60).

Re claim 69, Petti et al. shows wherein the second wall is provided with apertures for allowing the active substance in gaseous form through from the accommodation space (Fig. 2, 10g).

Re claim 72, Petti et al. shows wherein the second holder has a front wall (Fig. 1, 30) and a rear wall (20), which in between them define a reservoir (26) for the active substance, wherein the front wall is at least partially made of transparent or translucent material (column 5, lines 15-17).

Re claim 73, Petti et al. shows wherein the rear wall is made of a material that can be moistened by the agent in its liquid form (column 4, lines 51-52).

Re claim 74, Petti et al. shows wherein the rear wall prior to use is sealingly closed off by a covering layer (column 5, lines 10-12), which covering layer is provided with stripping means for the removal thereof from the rear wall.

Re claim 83, Petti et al. shows wherein the first holder is provided with a support surface for upright support thereof on a basis (Fig. 1, 10b).

Re claim 85, Petti et al. shows wherein the first holder substantially flat (Fig. 3).

Re claim 108, Petti et al. shows an assembly of a body (Fig. 1) holding an agent in liquid condition or a body of an agent in solid condition discharging an active gaseous substance (20), and a first holder for the body (10 & 40), wherein the first holder has an accommodation space (10a) for accommodation therein of the body, and wherein the first holder comprises two parts that can be attached to each other, which in between them define at least a part of the accommodation space, wherein the two parts are made of different material (column 4, lines 40-42 and column 5, lines 29-31).

Re claim 109, Petti et al. shows wherein the first part is made of hard material retaining its shape (column 5, lines 29-31) and the second part is made of synthetic material (column 4, lines 40-42).

Re claim 112, Petti et al. shows wherein the second part is provided with elastically deformable connection means for connection to the first part, such as by snapping (column 3, lines 56-60).

Re claim 114, Petti et al. shows wherein the front wall is at least as regards a lower portion made of transparent or translucent material (column 5, lines 15-17).

Re claim 115, Petti et al. shows wherein the front wall is entirely made of transparent or translucent material (column 5, lines 15-17).

Re claim 116, Petti et al. shows wherein the rear wall is made of a synthetic membrane (column 4, lines 51-52).

Re claim 117, Petti et al. shows wherein the rear wall is made of a synthetic membrane and is transparent or translucent (column 4, lines 51-52 & column 5, lines 12-17).

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Re claim 118, Petti et al. shows wherein the covering layer is attached to a circumferential edge of the rear wall in a manner so as to be pulled loose (Fig. 3, 30a).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 70 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haworth et al. (US Pat No 4,502,630) in view of Palson et al. (US Pat No 4,301,949).

Re claim 70, Petti et al. does not teach wherein the second wall is concave at the side facing away from the accommodation space.

However, Palson et al. does teach wherein the second wall is concave at the side facing away from the accommodation space (Fig. 6, 42).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the concavity of Palson et al. for a snug fit (column 3, lines 19-20).

Re claim 71, Petti et al. does not teach wherein the second wall at the concave side is provided with apertures for allowing the active substance in gaseous form through from the accommodation space.

However, Palson et al. does teach wherein the second wall at the concave side is provided with apertures (Fig. 6, 46) for allowing the active substance in gaseous form through from the accommodation space.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the apertures of Palson et al. to permit maximum dispensing (column 3, lines 29-30).

Claims 75, 76, 84, 98, 99, 101, 102 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haworth et al. (US Pat No 4,502,630) in view of Gueret et al. (US Pat No 4,844,251).

Re claim 75, Petti et al. does not teach wherein the stripping means comprise a tab.

However, Gueret et al. does teach a tab (Fig. 1, 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

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Re claim 76, Petti et al. does not teach wherein the tab is connected to the covering layer at the location of an edge area thereof.

However, Gueret et al. does teach wherein the tab is connected to the covering layer at the location of an edge area thereof (Fig. 1, 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 77, Petti et al. does not teach wherein the tab projects from the rear wall.

However, Gueret et al. does teach wherein the tab projects from the rear wall (Fig. 1, 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 84, Petti et al. does not teach wherein the second holder is substantially disc-shaped.

However, Gueret et al. does teach wherein the second holder is substantially disc shaped (Fig. 3, 18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the shape of Gueret et al. to save on material.

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Re claim 98, Petti et al. shows an assembly of a body (Fig. 1) including an agent in liquid or solid condition discharging an active gaseous substance (20), and a first holder for the body (10 & 40), wherein the first holder has an accommodation space for accommodation therein of the body (10a), wherein the body is formed like a second holder (50), having walls (24d), which in between them define a reservoir for the active substance (26), preferably liquid (column 5, lines 42-43), wherein at least one of the walls is made of a material that can be moistened by the agent in liquid form (column 4, lines 56-61), preferably a synthetic membrane (column 4, lines 51-52), wherein the wall prior to use is closed off by a covering layer (Fig. 1, 30a), which covering layer is provided with stripping means for the removal thereof from the wall.

Petti et al. does not teach wherein the stripping means extend to beyond the first holder.

However, Gueret et al. does teach wherein the stripping means extend to beyond the first holder (Fig. 1, 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 99, Petti et al. does not teach wherein the stripping means comprise a tab or wherein the tab is connected to the covering layer at the location of an edge area thereof.

However, Gueret et al. does teach a tab (Fig. 1, 19) and wherein the tab is connected to the covering layer at the location of an edge area thereof (4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 100, Petti et al. does not teach wherein the tab is foldable against the covering layer.

However, Gueret et al. does teach wherein the tab is foldable against the covering layer (Fig. 1, 4 & 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 101, Petti et al. does not teach wherein the said wall forms a rear wall of the second holder.

However, Gueret et al. does teach wherein the said wall forms a rear wall of the second holder (Fig. 1, 12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 102, Petti et al. does not teach wherein the tab is attached to a circumferential edge of the rear wall so as to be pulled loose.

However, Gueret et al. does teach wherein the tab is attached to a circumferential edge of the rear wall so as to be pulled loose (Fig. 1, 19).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 103, Petti et al. does not teach wherein the tab in folded condition projects from the rear wall (Fig. 1, 12 & 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the tab of Gueret et al. to be gripped by the user (column 6, lines 9-10).

Re claim 105, Petti et al. shows wherein the walls of the second holder are transparent or translucent (column 5, lines 10-17).

Re claim 111, Petti et al. does not teach a thermoplastic synthetic material.

However, Gueret et al. does teach a thermoplastic synthetic material (column 5, lines 60-61).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the plastic of Gueret for the deformation properties desired (column 5, line 68).

Claims 110 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haworth et al. (US Pat No 4,502,630) in view of Flashinski et al. (US Pat No 6,031,967).

Re claims 110 and 113, Petti et al. does not teach glass.

However, Flashinski et al. does teach glass (column 2, lines 58-59).



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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second container of Petti et al. with the glass of Flashinski et al. for a porous material (column 2, lines 58-59).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN CERNOCH whose telephone number is (571)270-3540. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./

Examiner, Art Unit 3752

/Len Tran/

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Supervisory Patent Examiner, Art Unit 3852